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In the Matter of

Numbering Resource Optimization

CC Docket No. 99-200

**BELLSOUTH CORPORATION COMMENTS**

**BellSouth Corporation**

Angela N. Brown  
Theodore Kingsley

Its Attorneys

Suite 4300  
675 West Peachtree Street, N. E.  
Atlanta, Georgia 30375-0001  
(404) 335-0724

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## EXECUTIVE SUMMARY

As the Commission takes additional steps to develop a national framework to promote the efficient use of numbering resources, BellSouth urges the Commission to act in a manner that will ensure that no carrier is unfairly deprived of needed numbering resources. As demonstrated more fully herein, BellSouth believes that the Commission can achieve efficient number usage, maintain uniformity throughout the nation, and avoid harming carriers and customers by taking the actions recommended below.

***Timely Area Code Relief and “Phased-In” Overlays.*** BellSouth urges the Commission and state regulators to make timely area code relief a priority. To that end, the Commission must make clear that, regardless of the type of relief adopted by a state, such relief must be implemented in a timely manner in order to avoid depriving customers of service.

To encourage state regulators to order timely relief, BellSouth is willing to support service- and technology-specific “phased-in” overlays as proposed by the Joint Wireless Commenters under a limited set of conditions. As a general matter, BellSouth continues to endorse the Commission’s prohibition against service- and technology-specific overlays. Notwithstanding this objection, BellSouth realizes that there may be some benefits associated with the implementation of a “phased-in” overlay and conditions its support upon the following criteria:

- (1) geographic splits and all-services overlays should remain the preferred forms of area code relief;
- (2) “phased-in” overlays should be permitted only in those areas where pooling has been implemented or will be implemented by the time the codes in the “phased-in” overlay are activated;
- (3) “phased-in” overlays should be permitted only where the NPA has a remaining life span of more than a year;

- (4) upon immediate exhaust of the original overlay code, both pooling and non-pooling carriers should have access to codes from the “phased-in” overlay;
- (5) “phased-in” overlays should be temporary and eventually converted to all-services overlays;
- (6) mandatory take-backs should be prohibited;
- (7) “phased-in” overlays should be implemented on a prospective basis only;
- (8) the ten-digit dialing requirement should be suspended for “phased-in” overlays; and
- (9) rationing should cease upon implementation of a “phased-in” overlay.

***Rate Center Consolidation.*** The Commission’s recently adopted rule that conditions a carrier’s ability to receive growth codes upon the carrier’s demonstration that all of its numbering resources in a particular rate center will exhaust within six months not only discourages rate center consolidation but also discriminates against carriers with multiple switches in a rate center. To preserve the viability of rate center consolidation and avoid unlawfully discriminating against a specific class of carriers, the Commission should take one of the following actions: (1) allow carriers that operate multiple switches in a single rate center to calculate Months-To-Exhaust (“MTE”) on a per-switch basis; or (2) at a minimum, allow a carrier with multiple switches in a rate center to calculate MTE at the switch level if that carrier satisfies the required utilization threshold on a rate center basis.

***Scope of Liability for Non-Compliance with Reporting Requirements.*** BellSouth objects to the Commission’s proposal to hold related carriers liable for a carrier’s failure to comply with the new reporting obligations. Not only would it be impossible to develop a single rule to account for the complexities of corporate relationships, but it also would be impossible and inefficient for the North American Numbering Plan Administrator (“NANPA”) to administer such a rule. Accordingly, the Commission should stick with a simple, bright-line rule that only subjects the non-compliant carrier to liability for a violation of the reporting requirements. In

addition, BellSouth urges the Commission to limit the scope of the withholding of numbering resources to the scope of the noncompliance.

***State Access to the NANPA's Database.*** BellSouth supports state commission access to the NANPA's database as long as the data reviewed is the same data and in the same form as that submitted in the Numbering Resource Utilization/Forecast ("NRUF") Report. Access to compiled or summarized data should be prohibited in order to avoid the possibility of state commissions drawing improper conclusions or misinterpreting data. Finally, a state commission should have access only to the data concerning the rate centers and NPAs in that commission's state.

***Fees for Number Reservations.*** The Commission should allow customers to pay for unlimited reservations of numbers on a month-to-month basis. In addition, the Commission should leave to the discretion of individual service providers decisions such as whether or not to allow reservation extensions for a fee and what that fee might be. They are in the best position to assess their respective costs to hold, bill, and report number reservations and determine whether or not to allow reservation extensions for a fee.

***State Authority to Conduct Audits.*** BellSouth submits that there is no need to grant states any additional audit authority because most, if not all, states have independent audit authority. Moreover, any audit program should be done under a national approach using national guidelines to ensure uniformity.

***Paying For Numbering Resources.*** The Commission should not require carriers to pay for numbering resources. There are strong legal, policy, and administrative reasons against such a payment mechanism. Thus, rather than expending resources to devise and evaluate a pricing

mechanism for numbers, the Commission should allow the new conservation measures adopted in this proceeding time to work.

***Cost Recovery.*** BellSouth urges the Commission to proceed with developing a cost recovery mechanism. The Commission established a cost recovery scheme for number portability prior to having detailed cost information, and there is no reason why it cannot take the same approach here. Moreover, the Commission should permit, but not require, incumbent LECs subject to rate-of-return or price-cap regulation to recover their carrier-specific costs directly related to providing number portability either by increasing the existing local number portability end-user charge or by extending the duration of the current number portability tariff.

***Requiring Non-LNP Capable Carriers to Implement Pooling.*** The Commission should not require non-local number portability (“LNP”) capable carriers to implement LNP solely to participate in pooling. Such a requirement would be extremely costly for non-LNP capable carriers without any significant countervailing benefits. Moreover, until there is more reliable and verifiable evidence to demonstrate that the benefits of number pooling outweigh the costs, the Commission should not extend pooling beyond the initial pooling areas.

***Safety Valve.*** The record overwhelmingly supports the development of a “safety valve” that allows a carrier to obtain numbering resources even though that carrier fails to meet the utilization threshold requirement. The Commission therefore should make clear that state commissions have authority to hear and decide carrier requests for waiver of the utilization threshold requirement. In addition, the Commission must ensure that any “safety valve” process adopted is expeditious.

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**BELLSOUTH CORPORATION**  
**COMMENTS**

BellSouth Corporation, by counsel and on behalf of itself and its wholly-owned subsidiaries, respectfully submits its comments in response to the *Second Further Notice of Proposed Rulemaking* ("Second FNPRM") in the above-captioned proceeding.<sup>1</sup>

**I. REGARDLESS OF THE TYPE OF AREA CODE RELIEF SELECTED BY A STATE COMMISSION, SUCH RELIEF MUST BE IMPLEMENTED IN A TIMELY MANNER.**

It is absolutely critical that state commissions work with consumers and the industry to implement timely area code relief. As the Commission points out, "the timely implementation of area code relief is essential if new providers are to enter and new services are to appear in the telecommunications marketplace."<sup>2</sup> The optimal situation is to avoid jeopardy altogether. This outcome can be achieved if the North American Numbering Plan Administrator ("NANPA") accurately projects exhaust dates, carriers provide relevant data regarding area code relief

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<sup>1</sup> *Numbering Resource Optimization and Petition for Declaratory Ruling and Request For Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717*, CC Docket Nos. 99-200 and 96-98, *Second Report and Order*, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 00-420 (rel. Dec. 29, 2000) ("Second Report and Order" and "Second FNPRM").

<sup>2</sup> *Second Report and Order*, ¶ 59.

options, and state commissions adopt relief plans in a timely manner. Although the formula to avoid jeopardy may appear simple, reality tells a different story. As of February 13, 2001, there were 33 NPAs for which NANPA had declared jeopardy within the last two months.<sup>3</sup> Lotteries and other restrictive rationing procedures are not the solution to this problem. Timely area code relief is the best medicine. Therefore, rather than relying on stringent rationing procedures to extend artificially the life of an area code, BellSouth urges state regulators to act quickly to develop and implement appropriate area code relief plans.

Although BellSouth continues to support allowing states to determine the appropriate form of relief, the Commission must make clear that, regardless of the type of relief adopted, such relief must be implemented in a timely fashion in order to avoid depriving customers of service. The Commission has repeatedly stated that, “[u]nder no circumstances should consumers be precluded from receiving telecommunications services of their choice from providers of their choice for a want of numbering resources.”<sup>4</sup> Thus, timely and efficient implementation of area code relief by state commissions should be a priority for the Commission as well as state regulators.

BellSouth recognizes that the Commission’s willingness to revisit the prohibition against service-specific and technology-specific overlays<sup>5</sup> is an attempt to assist the states, carriers, and consumers deal with the challenges associated with number exhaust. In taking a fresh look at this prohibition, the Commission’s overarching goal should be to encourage state regulators to

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<sup>3</sup> NPAs in Jeopardy, Bulletin Board at [http://www.nanpa.com/news/bulletin\\_board.html](http://www.nanpa.com/news/bulletin_board.html).

<sup>4</sup> *Second Report and Order*, ¶ 61.

<sup>5</sup> *Second FNPRM*, ¶ 128.

adopt area code relief measures in a timely manner regardless of the method selected and to ensure access to numbering resources for all carriers.

**A. The Commission Should Continue To Prohibit Service- and Technology-Specific Overlays As A General Rule With the Exception of “Phased-In” Overlays Adopted Under Limited Circumstances.**

BellSouth continues to support the Commission’s general prohibition against service-specific and technology-specific overlays. The original rationale for this restriction – “the disproportionate burden . . . on some classes of carriers . . .”<sup>6</sup> is still applicable today. Service- and technology-specific overlays are no less anti-competitive than they were six years ago when the Commission forbade their use. In fact, given the current number exhaust crisis, the implementation of service- and technology specific overlays could lead to even greater discrimination today because of the increased number of carriers affected due to competition. BellSouth therefore continues to support the Commission’s general prohibition against the use of service- and technology-specific overlays.

Notwithstanding this objection, BellSouth realizes that there may be some benefits associated with the implementation of a service- or technology-specific overlay under limited circumstances. As the Commission acknowledges, “many states have become increasingly reluctant to implement area code relief, in the face of significant customer resistance.”<sup>7</sup> This reluctance has resulted in state regulators adopting stringent rationing procedures and delaying the implementation of much-needed area code relief. BellSouth strongly agrees with the

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<sup>6</sup> *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech – Illinois*, IAD File No. 94-102, *Declaratory Ruling and Order*, 10 FCC Rcd 4596, 4608, ¶ 28 (1995) (“*Ameritech Order*”).

<sup>7</sup> *Second FNPRM*, ¶ 130.

Commission that “timely implementation of area code relief is critically important to telecommunications carriers’ ability to compete in the telecommunications marketplace.”<sup>8</sup> If the use of “phased-in” overlays will make state commissions more comfortable with area code relief thereby facilitating timely implementation of such relief, BellSouth encourages serious consideration of this proposed measure.

BellSouth believes that the “phased-in” overlay proposal set forth by the Joint Wireless Commenters, subject to some modifications, might be appropriate under certain strict conditions. Under the Joint Wireless Commenters’ proposal, non-local number portability (“LNP”)-capable carriers (or non-pooling carriers) that qualify for additional numbering resources would receive NXX codes only from a temporary (“transitional” or “phased-in”) overlay. The “phased-in” overlay would be converted to an all-services overlay after the underlying NPA reaches exhaust. BellSouth supports this proposal subject to certain caveats discussed more fully below.

“Phased-In” Overlays Should Be Used Sparingly. “Phased-in” overlays should be the exception, not the rule. The Commission should make clear that all-services overlays and geographic splits remain the primary and preferred means of area code relief. Because service- and technology-specific overlays are not competitively neutral, they should be allowed only under limited circumstances.

Pooling Must Have Commenced or Will Commence Before the Release of Codes in the Overlay NPA. A “phased-in” overlay is appropriate only in those areas where pooling already has been implemented or will be implemented prior to the activation of codes from the overlay NPA. States must not be allowed to order “phased-in” service- and technology-specific overlays

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<sup>8</sup> *Second Report and Order*, ¶ 58.

in the absence of pooling. To do otherwise would defeat the purpose of the “phased-in” overlay, which is to ensure that both pooling and non-pooling carriers have access to numbering resources. In the absence of pooling, the state commissions must order either an all-services overlay or a geographic split to relieve an area code from exhaust.

*The Existing NPA Must Have a Life Span of More Than a Year.* The Commission should permit states to implement “phased-in” overlays only in areas where the existing NPA is not in jeopardy. The Joint Wireless Commenters’ proposal allows states to order transitional service- or technology-specific overlays only when the underlying area code is relatively close to exhaust.<sup>9</sup> The Joint Wireless Commenters suggest prohibiting the North American Numbering Plan Administrator (“NANPA”) from releasing codes from the new “phased-in” overlay until the original NPA has: (1) 30 codes remaining or (2) a quantity of NXX codes equal to one times the number of rate centers in the original NPA, whichever is greater.<sup>10</sup>

Although BellSouth does not object to these triggers, it strongly believes that there should be a time limitation on when “phased-in” service- and technology-specific overlays may be used. Specifically, BellSouth believes that the Commission should allow the implementation of a “phased-in” overlay only where the NPA has a remaining life span of more than a year. This approach is consistent with the Commission’s rules regarding state authority to implement

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<sup>9</sup> *Second FNPRM*, ¶ 140.

<sup>10</sup> *Second FNPRM*, ¶ 140 (citing Letter from Judith St. Ledger-Roty and Todd D. Daubert, Kelley Drye & Warren LLP, to Magalie Roman Salas, Secretary, FCC, Proposal for Phased-in Area Code Relief, *Numbering Resource Optimization*, CC Docket No. 99-200, at 3 (dated Nov. 15, 2000) (joint filing on behalf of PCIA, AT&T Wireless Services, Inc., Nextel Communications, Inc., Verizon Wireless, Verizon Wireless Messaging Services, and VoiceStream Wireless Corp.).

pooling. In order to obtain delegated authority to conduct pooling, a state must demonstrate, among other things, that the NPA in question has a remaining life span of at least a year.<sup>11</sup>

Such a condition is necessary because reliance on the proposed triggers alone could lead to inefficiencies in the implementation of area code relief plans. For example, conditions vary across states and even across NPAs within states. In NPA 1, there may be 15 carriers requesting two codes per month. Using the 30 NXX trigger proposed by the Joint Wireless Commenters, the existing NPA would exhaust in two months. Under this scenario, it would be a waste of time and resources to implement a “phased-in” overlay and subsequently convert to an all-services overlay in two months. Allowing states to use “phased-in” overlays only when the existing NPA has a life span of at least a year will ensure that the overlay actually provides some benefit by relieving the existing NPA.

*All Carriers Must Have Access to Numbers.* Any “phased-in” overlay proposal must ensure that pooling and non-pooling carriers have equivalent access to numbering resources. BellSouth therefore is confused about the Commission’s query as to whether LNP-capable carriers should be prohibited from taking numbers out of the transitional overlay code prior to the time that it is converted to an all-services overlay.<sup>12</sup> It is not altogether clear exactly what the Commission is asking here. As BellSouth understands the Joint Wireless Commenters’ proposal, prior to the exhaust of the original NPA, non-pooling carriers will receive codes from the new overlay NPA, while pooling carriers will continue to receive codes from the existing NPA. Once

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<sup>11</sup> *Numbering Resource Optimization*, CC Docket No.99-200, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 7574, 7648, ¶ 164 and 7651-7652, ¶ 170 (2000) (“*Report and Order*”).

<sup>12</sup> *See Second FNPRM*, ¶ 139.

the original NPA reaches exhaust, both pooling and non-pooling carriers will receive additional codes from the “phased-in” overlay NPA. Thus, pooling carriers will not receive codes from the new overlay NPA until the original NPA reaches exhaust; therefore, there is no need to “prohibit” pooling carriers from obtaining numbers from the overlay NPA prior to conversion to the all-services overlay.

If the Commission is suggesting that there be a period after the original NPA has reached exhaust, but prior to the conversion to the all-services overlay, in which pooling carriers are not permitted to obtain numbers from the “phased-in” overlay NPA, BellSouth strongly objects. BellSouth supports the Joint Wireless Commenters’ proposal so long as there is no additional transition period after exhaust of the original NPA during which pooling carriers are unable to obtain codes from the “phased-in” overlay NPA. Upon immediate exhaust of the original overlay code, both pooling and non-pooling carriers should have access to codes from the transitional overlay. To do otherwise would place pooling carriers at a competitive disadvantage by unlawfully denying them access to codes.

“Phased-In” Overlays Should Be Temporary. States should not be permitted to adopt long-term or permanent service- or technology-specific overlays.<sup>13</sup> Any “phased-in” overlay must be temporary and eventually converted to an all-services overlay in order to avoid unlawfully discriminating against any class of carriers or customers. BellSouth supports converting to an all-services overlay when either the existing NPA has reached exhaust, at which time pooling and non-pooling carriers would receive codes from the overlay NPA, or November 24, 2002, when wireless carriers must commence pooling, whichever is sooner.

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<sup>13</sup> See *Second FNPRM*, ¶ 142.

*The Commission Should Prohibit Mandatory Take-Backs.* BellSouth agrees with the Commission's tentative conclusion "that transitional technology-specific overlays may not include mandatory 'take-backs' and may only be implemented on a prospective basis."<sup>14</sup> The prohibition on take-backs is consistent with the Commission's refusal to permit take-backs of numbers that affect a single class of carriers or customers.<sup>15</sup> Take-backs are not a necessary component of a transitional service- or technology-specific overlay. Moreover, there is no need to inconvenience certain customers by requiring them go through the cost and inconvenience of returning existing telephone numbers, reprogramming equipment, and changing to new numbers. Finally, mandatory take-back arrangements would make "phased-in" overlays a less attractive relief method for state commissions thereby negating the purpose behind waiving the Commission's prohibition against service- and technology-specific overlays.

*"Phased-In" Overlays Should Be Implemented on a Prospective Basis Only.* BellSouth also agrees with the Commission's tentative conclusion to allow transitional overlays on a prospective basis only.<sup>16</sup> Permitting states to order "phased-in" overlays on a retrospective basis would disrupt existing area code relief plans, create customer confusion, and impose additional burdens and costs on carriers. The Commission therefore should allow states to use this relief measure only on a going-forward basis. If a state has already chosen a relief plan, but implementation has not yet begun, that state should be barred from changing the relief plan in midstream. Hearings would have already occurred, and studies would have been conducted. It would be unreasonable, inefficient, and costly to allow state commissions to start from scratch.

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<sup>14</sup> *Second FNPRM*, ¶ 134.

<sup>15</sup> *Ameritech Order*, 10 FCC Rcd at 4608, ¶ 27.

<sup>16</sup> *See Second FNPRM*, ¶ 134.

Moreover, the delay in relief would only exacerbate the numbering crisis that gave rise for the need for relief in the first place.

*Mandatory 10-Digit Dialing Should Be Waived.* The Commission seeks comment on whether there is a basis to depart from the ten-digit dialing requirement for “phased-in” overlays.<sup>17</sup> BellSouth fully supports waiving this dialing requirement and agrees that permissive ten-digit dialing “may make transitional overlays more attractive to states, many of which have resisted implementing overlays because of the ten-digit dialing requirement.”<sup>18</sup> In fact, BellSouth urges the Commission to consider eliminating the mandatory ten-digit dialing requirement altogether.<sup>19</sup> Mandatory ten-digit dialing is more of a hindrance than a help to timely area code relief. Many state commissions are reluctant to proceed with overlays in a timely fashion because of the numerous customer complaints received about the inconvenience of dialing ten digits. Just as granting states authority to order “phased-in” overlays under certain conditions may prompt states to implement area code relief in a more timely manner, BellSouth strongly believes that giving states the flexibility to decide whether to allow seven-digit intra-NPA dialing also will entice states not to delay needed area code relief. Thus, at a minimum, the Commission should suspend the ten-digit dialing requirement for “phased-in” overlays. A more beneficial approach would be to repeal this requirement for all-services overlays and allow states the discretion to require mandatory-ten digit dialing or permit seven-digit intra-NPA dialing.

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<sup>17</sup> *Second FNPRM*, ¶ 138.

<sup>18</sup> *Id.*

<sup>19</sup> BellSouth plans to seek reconsideration of the mandatory ten-digit dialing requirement for all-services overlays in a subsequent petition for reconsideration.

*Rationing Should Cease Upon the Implementation of a Phased-in” Overlay.* BellSouth agrees with the Joint Wireless Commenters “that where a state has implemented a transitional technology-specific overlay, any state imposed rationing scheme in either the underlying area code or the transitional overlay should be ended.”<sup>20</sup> As the Commission has concluded, rationing should be used only in extreme circumstances.<sup>21</sup> The implementation of a “phased-in” overlay obviates the need to commence or continue rationing since the potential exhaust of the original NPA has been addressed. Thus, rationing should terminate upon implementation of a “phased-in” overlay.

In sum, BellSouth continues to support the Commission’s general prohibition against service- and technology-specific overlays. However, BellSouth does not object to the use of “phased-in” overlays as proposed by the Joint Wireless Commenters under a limited set of conditions. This option should not be used on a routine basis. Moreover, the Commission should make clear that all-services overlays and geographic splits remain the preferred forms of area code relief because they avoid discriminating against a certain class of carriers or customers. Accordingly, BellSouth’s support for the “phased-in” overlay proposal is conditioned upon the safeguards discussed above.

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<sup>20</sup> *Second FNPRM*, ¶ 140.

<sup>21</sup> *See Second Report and Order*, ¶ 61.

## **II. THE COMMISSION'S CURRENT MONTHS-TO-EXHAUST RULE DISCOURAGES RATE CENTER CONSOLIDATION AND UNLAWFULLY DISCRIMINATES AGAINST A CERTAIN CLASS OF CARRIERS.**

The Commission asks commenters to identify policies that might reduce the extent to which the rate center system contributes to number exhaust<sup>22</sup> and to discuss any rate center consolidation efforts.<sup>23</sup> To date, BellSouth has been actively involved in various rate center consolidation efforts in its nine-state region. For example, BellSouth has submitted detailed studies in Florida, Georgia, North Carolina, and Tennessee assessing the effects of rate center consolidation. In addition, the Georgia Public Service Commission recently ordered rate center consolidation in the metropolitan Atlanta area to become effective August 2001.<sup>24</sup> Plans also are underway to implement rate center consolidation in the Florida Keys in fourth quarter 2001.

Notwithstanding the efforts described above, BellSouth will be less inclined to support rate center consolidation going forward. The primary reason is the Commission's failure to modify its recently adopted rule that conditions a carrier's ability to receive growth codes upon the carrier's demonstration that all of its numbering resources in a particular rate center will exhaust within six months.<sup>25</sup> Despite the overwhelming evidence on the record that this rule discourages rate center consolidation and deprives certain carriers of numbering resources, the Commission has refused to modify the rule.

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<sup>22</sup> *Second FNPRM*, ¶ 146.

<sup>23</sup> *Id.*, ¶ 148.

<sup>24</sup> *NeuStar, Inc., North American Numbering Plan Administrator f/k/a/ Lockheed Martin IMS North American Numbering Plan Administrator: 678 Area Code Relief*, GPSC Docket No. 10448-U, Order (decided Feb. 6, 2001).

<sup>25</sup> 47 C.F.R. § 52.15(g)(3)(iii).

One of the first and most effective steps that the Commission can take to encourage rate center consolidation is to change the current Months-To-Exhaust (“MTE”) rule. Specifically, the Commission should allow a carrier that operates multiple switches in a single rate center to calculate MTE on a per-switch basis if that carrier satisfies the utilization threshold requirement. In the absence of a rule change, carriers will be less inclined to support rate center consolidation because the existing rule penalizes carriers with multiple switches in a rate center.

There appears to be have been some confusion regarding BellSouth’s and other carrier’s requests that the Commission modify the MTE rule. Contrary to the Commission’s claims, BellSouth does not object to calculating utilization on a rate center basis. Rather, BellSouth opposes requiring a carrier to calculate MTE on a rate center basis when that carrier has multiple switches in a rate center. Part of this confusion may stem from the July 11, 2000 *Public Notice*, in which the Commission stated that carriers could not calculate “months-to-exhaust utilization” on a per switch basis.<sup>26</sup> There is no such thing as “months-to-exhaust utilization.” MTE and utilization are two distinct concepts. Utilization measures a carrier’s actual use of its numbering resources at a single point in time. MTE, however, measures the length of time in months that it will take for a carrier to exhaust its numbering resources and includes anticipated demand in the calculation.

The Commission expressly stated that “carriers must meet both the MTE and the utilization threshold requirements to receive growth numbering resources.”<sup>27</sup> Both of these

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<sup>26</sup> *Common Carrier Bureau Responses to Questions in the Numbering Resource Optimization Proceeding*, CC Docket No. 99-200, *Public Notice*, DA 00-1549, at 3 (rel. July 11, 2000) (“*Public Notice*”).

<sup>27</sup> *Second Report and Order*, ¶ 29.

calculations must occur at the rate center level. In order to obtain a growth code, a carrier must satisfy not only the utilization threshold requirement<sup>28</sup> but also the MTE rule, which currently precludes carriers from maintaining more than a six-month inventory of telephone numbers in a rate center.<sup>29</sup> In three *ex parte* meetings with the Commission, BellSouth proposed an alternative that would allow carriers that meet the specified utilization threshold at the rate center level to calculate MTE at the switch level when the carrier has multiple switches in a rate center.<sup>30</sup> This alternative still would require a carrier to meet the utilization threshold and MTE requirements, but would allow a carrier with multiple switches in a rate center to calculate MTE at the switch level instead.

BellSouth does not object to requiring a carrier to calculate MTE at the rate center level if that carrier operates a single switch in that rate center. However, where a carrier has multiple switches in a single rate center, the Commission should allow that carrier to calculate MTE on a per-switch basis. This approach is necessary because telephone numbers are assigned at the switch level and, in the absence of pooling, cannot be shared easily among multiple switches.

If the Commission does not solve the MTE problem in the short term, support for rate center consolidation will inevitably diminish. The Commission has been a vigorous proponent

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<sup>28</sup> The national utilization threshold requirement (60 percent) does not become effective until May 2001. In the interim, carriers must continue to meet the MTE requirement. In those states granted authority to continue to apply the state-mandated threshold requirement (so long as it does not exceed the 75 percent maximum), carriers must satisfy both the utilization threshold requirement and the MTE rule.

<sup>29</sup> 47 C.F.R. § 52.15(g)(3)(iii).

<sup>30</sup> BellSouth *Ex Parte*, Letter from Kathleen B. Levitz, Vice President-Federal Regulatory, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 99-200, at 7 (filed Nov. 28, 2000); BellSouth *Ex Parte*, Letter from Kathleen B. Levitz, Vice President-Federal Regulatory, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 99-200, at 9 (filed Oct. 19, 2000); BellSouth *Ex Parte*, Letter from Kathleen B. Levitz, Vice President-Federal Regulatory, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 99-200, at 9 (filed Sept. 27, 2000).

of rate center consolidation and has encouraged state regulators to adopt this conservation method.<sup>31</sup> As discussed above, in BellSouth's region, plans to implement rate center consolidation efforts are underway in the metropolitan Atlanta area and the Florida Keys, and the North Carolina and Tennessee commissions are currently studying the measure. Much of the work to assess the impact of rate center consolidation in BellSouth's region preceded the Commission's MTE rule and therefore did not account for the anti-competitive effects on carriers with multiple switches in a rate center. An analysis of rate center consolidation today under the current numbering rules would undoubtedly show that requiring a carrier with multiple switches in a rate center to calculate MTE on a rate center-basis acts as a deterrent to rate center consolidation.

Rate center consolidation is attractive from a number optimization standpoint because it reduces the number of codes a carrier needs in order to establish a footprint thereby lowering the demand for NXX codes. However, requiring carriers to calculate MTE on a rate-center basis regardless of the number of switches in the particular rate center makes this optimization method far less appealing. For example, suppose a carrier has three switches – one in each of three rate centers. Assume that a rate center consolidation plan proposes to combine the three rate centers into a single rate center. After consolidation, the carrier will have three switches in one rate center. Under the Commission's current rule, that carrier would have to calculate MTE by combining the available numbers for the three switches. As demonstrated above, if two of the

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<sup>31</sup> See *Numbering Resource Optimization, et al.*, CC Docket Nos. 99-200, et al., *Order*, DA 00-1616, ¶ 3 (rel. July 20, 2000) (“*Joint State Numbering Order*”); *Florida Public Service Commission Petition to Federal Communications Commission for Expedited Decision for Grant of Authority to Implement Number Conservation Measures*, 14 FCC Rcd 17506, 17521, ¶ 38 (1999).

three switches are near exhaust and one is not, the overall MTE will be distorted and may unnecessarily and unfairly preclude a carrier from obtaining needed numbering resources. Accordingly, in order to ensure carrier access to numbering resources and to preserve the viability of rate center consolidation as a conservation measure, BellSouth urges the Commission to permit carriers that operate multiple switches in a rate center to calculate MTE on a per-switch basis.

Not only does requiring the calculation of MTE at the rate center level, regardless of whether a carrier operates multiple switches in a rate center, discourage rate center consolidation, but it also violates the Commission's numbering administration policy by discriminating against a class of carriers. The Commission's long standing guidelines state that numbering administration should: (1) seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient and timely basis; (2) not unduly favor or disadvantage any particular industry segment or group of consumers; and (3) not unduly favor one technology over another.<sup>32</sup>

The current MTE rule fails the Commission's own test. Carriers that operate multiple switches in a single rate center, such as BellSouth, are unfairly disadvantaged by this rule. The following discussion illustrates the problem facing BellSouth and many other carriers. Suppose a carrier operates two switches in a rate center and one of the switches is five months from exhaust and the other is 18 months from exhaust. Under the Commission's rule, this carrier would be precluded from obtaining additional numbering resources because the overall MTE on a rate center-basis would reflect the time to exhaust as beyond six months despite the low MTE

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<sup>32</sup> *Ameritech Order*, 10 FCC Rcd at 4604, ¶ 18.

for one switch. Although the above example is hypothetical, BellSouth has experienced the discriminatory effects of this rule. To date, the NANPA has denied 16 BellSouth code requests because of BellSouth's inability to meet the MTE criteria at the rate center level. Of the total 16 code denials, eight were associated with customer specific requests for a dedicated code and the other eight were for growth codes. BellSouth has been unable to qualify for a code assignment in any of its rate centers where multiple switches have been deployed.

The Commission appears to dismiss the fact that there are sound and legitimate reasons to deploy multiple switches in a rate center, including customer demand, historical buildout, population density and/or growth, and switch capacity limitations. In rural areas, one switch per rate center is not unusual; however, in larger, urban areas, it is not uncommon for a carrier, in particular, the incumbent local exchange carrier ("ILEC"), to have multiple switches in a single rate center. A carrier should not be penalized simply because it has deployed multiple switches in a rate center in order to meet customer demand for telephone services. Requiring calculation of the MTE at the rate center level primarily discriminates against ILECs as a class of carriers, because ILECs are more likely than other carriers to have deployed multiple switches in a rate center to meet customer demand.

The Commission's suggestion that carriers can resolve this problem unilaterally by implementing certain measures, such as intra-rate center and intra-company porting of numbers, oversimplifies the problem and underestimates current technical limitations.<sup>33</sup> BellSouth does not disagree with the Commission that carriers should consider moving toward these type of measures. However, the Commission must realize that, in the absence of pooling, numbers

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<sup>33</sup> See *Second Report and Order*, ¶ 33.

cannot be shared among switches. BellSouth has already intra-company ported blocks in the Fort Lauderdale, Florida MSA where number pooling has commenced, and it expects to continue this practice wherever number pooling is implemented. As the Commission is well aware, carriers are diligently working to implement thousands-block number pooling in more than 25 states. Only after the functionalities for both number portability and number pooling are fully in place will it be possible for a carrier to port numbers between its switches.<sup>34</sup> Thus, the measures suggested by the Commission are premature for those locations where number pooling has not yet been implemented.

Accordingly, in order to ensure fair and non-discriminatory access to numbering resources and to preserve the viability of rate center consolidation, the Commission must modify its current MTE rule. BellSouth urges the Commission either to reverse its rule prohibiting carriers that operate multiple switches in a single rate center from calculating MTE on a per-switch basis, or, at a minimum, allow a carrier with multiple switches in a rate center to calculate MTE at the switch level if that carrier meets the required utilization threshold on a rate center basis.

### **III. THE COMMISSION SHOULD LIMIT LIABILITY FOR FAILURE TO COMPLY WITH THE MANDATORY REPORTING REQUIREMENTS TO THE NON-COMPLIANT CARRIER AND THE SCOPE OF THE NON-COMPLIANCE.**

The Commission tentatively concludes “that carriers should, in certain instances, have numbering resources withheld when related carriers are subject to withholding for failure to

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<sup>34</sup> It should be noted that BellSouth’s preliminary analysis indicates that intra-company porting of blocks will only provide short-term relief for a switch running out of numbers. More importantly, intra-company porting of blocks will in most cases still not enable BellSouth to satisfy the current MTE rule.

comply with [ ] [the] mandatory reporting requirements.”<sup>35</sup> BellSouth strongly opposes this proposal for the following reasons. First, as the Commission correctly recognizes, the relationships among parents, affiliates, subsidiaries, and other related companies are often complex and vary among companies.<sup>36</sup> Minority ownership interests, majority ownership interests, voting rights, *de facto* control – these are just a few of the concepts that would have to be addressed in a rule purporting to attribute liability to related companies. It would be impossible to develop a single rule to account for the many different permutations of corporate structures.

Second, it would be impossible for the NANPA to administer such a rule. Corporate relationships are not always obvious. Therefore, in order to attribute liability to multiple related carriers, the NANPA would have to understand the corporate structure, which in some instances might require a detailed investigation. Not only would such a process be a waste of time and resources, but it could potentially delay carrier access to codes as the NANPA tries to decipher ownership agreements, accounting statements, SEC reports, and any other information necessary to gain a full understand of a company’s corporate structure.

Third, the non-compliant carrier is in the best position to address and perhaps resolve any violation of the reporting rules, not the parent or sister company. Only the non-compliant carrier will have access to and an understanding of the relevant data. From a practical standpoint, it makes no sense to penalize a related carrier that probably has no knowledge of the violation and cannot cure the non-compliance.

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<sup>35</sup> *Second FNPRM*, ¶ 150.

<sup>36</sup> *See Second FNPRM*, ¶ 152.

The Commission suggests that imposing liability on parent and related companies can serve as an incentive to ensure compliance.<sup>37</sup> BellSouth submits that such incentive already exists and no further motivational measures are needed. The primary incentive for carriers to comply with the mandatory reporting requirements is the ability to obtain needed numbering resources in order to serve customers. The penalties for non-compliance include, among other things, the withholding of numbering resources, fines, penalties, and audits. Carriers clearly have significant motivation to comply with the Commission's rules. Thus, there is absolutely no need or justification for penalizing carriers simply because they may be related to a non-compliant carrier.

Accordingly, BellSouth encourages the Commission to stick with a simple, bright-line rule that only subjects the non-compliant carrier to liability for violating the reporting requirements. BellSouth also urges the Commission to limit the scope of the withholding of numbering resources to the scope of the noncompliance. For example, a carrier that supplies inadequate data for a single NPA should not be penalized by the NANPA withholding numbers for the entire state. There must be some rational limit to the reach of the withholding.

#### **IV. THE COMMISSION SHOULD ALLOW STATE COMMISSIONS TO ACCESS THE NANPA'S DATABASE ONLY UNDER CERTAIN CONDITIONS**

The Commission seeks comment on its tentative conclusion that "states should have password-protected access to mandatorily reported data received by the NANPA."<sup>38</sup> BellSouth supports state commission access to utilization and forecast data as long as the data reviewed is

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<sup>37</sup> *Second FNPRM*, ¶ 150.

<sup>38</sup> *Id.*, ¶ 151.